

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

STANLEY J. MADAY,

Plaintiff,

vs.

BOB DOOLEY, CHIEF WARDEN AT
MIKE DURFEE STATE PRISON,
INDIVIDUAL AND OFFICIAL CAPACITY;
DENNIS KAEMINGK, SECRETARY OF
THE SOUTH DAKOTA DOC,
INDIVIDUAL AND OFFICIAL CAPACITY;
DR. MARY CARPENTER, DIRECTOR OF
THE DEPARTMENT OF HEALTH,
INDIVIDUAL AND OFFICIAL CAPACITY;
JENNIFER STANWICK-KLIMEK,
DEPUTY WARDEN AT MIKE DURFEE
STATE PRISON, INDIVIDUAL AND
OFFICIAL CAPACITY; REBECCA
SCHIEFFER, ASSOCIATE WARDEN AT
MIKE DURFEE STATE PRISON,
INDIVIDUAL AND OFFICIAL CAPACITY;
ALEJANDRO REYES, ASSOCIATE
WARDEN AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; BRENT FLUKE, ASSOCIATE
WARDEN AT MIKE DURFEE STTAE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; JOSH KLIMEK, UNIT
MANAGER AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; TRAVIS TJEERDSMA, CASE
MANAGER AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; TAMMY DEJONG, CASE
MANAGER AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; PA MICHAEL JOE HANVEY,

4:17-CV-04168-KES

ORDER

MEDICAL PROVIDER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; PA BRAD ADAMS, MEDICAL PROVIDER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; DR. STEPHAN SCHROEDER, MEDICAL PROVIDER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MISTY TOLSMA-HANVEY, NURSING SUPERVISOR, AT MIKE DUFEE STATE PRISON INDIVIDUAL AND OFFICIAL CAPACITY; LINDSEY RABBASS, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; ROBIN MYER, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; CANDICE FEJFAR, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; DAYNA KLAWITTER, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; DENNIS CROPPER, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; THOMAS HUITEMA, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MICHAEL MEYER, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; LORI STRATMAN, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MIKE GROSSHUESCH, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; NICOLE ST. PIERRE, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MURIEL NAMMINGA, LAUNDRY	
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SUPERVISOR AT MIKE DURFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; CATHERINE SCHLIMGEN, LEGAL COUNSEL FOR THE SOUTH DAKOTA DOC, INDIVIDUAL AND OFFICIAL CAPACITY; UNKNOWN CBM FOOD SERVICES EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; UNKNOWN SOUTH DAKOTA DOC EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; UNKNOWN SOUTH DAKOTA DOH EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; JON E. LITSCHER, SECRETARY OF THE WISCONSIN DOC, INDIVIDUAL AND OFFICIAL CAPACITY; KATHARINE A. ARISS, ASSISTANT LEGAL COUNSEL FOR THE WISCONSIN DOC, INDIVIDUAL AND OFFICIAL CAPACITY; THOMAS P. MALONEY, LIBRARY SERVICES AND EDUCATIONAL TECHNOLOGY COORDINATOR FOR THE WISCONSIN DOC, INDIVIDUAL AND OFFICIAL CAPACITY; UNKNOWN WISCONSIN DOC EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; AND CBM FOOD SERVICES, MEAL AND COMMISSARY PROVIDER FOR THE SOUTH DAKOTA DOC, OFFICIAL CAPACITY;

Defendants.

Plaintiff, Stanley J. Maday, is an inmate at the Mike Durfee State Prison in Springfield, South Dakota. Maday filed a pro se civil rights lawsuit under 42 U.S.C. § 1983 and the Americans with Disabilities Act (ADA). Docket 1. The court referred the case to Magistrate Judge Veronica L. Duffy in its January 19,

2018 order and under 28 U.S.C. § 636(b)(1)(A) and (B). There are several motions pending before the court.

I. Docket 70

On March 12, 2018, defendants, Bob Dooley, Dennis Kaemingk, Dr. Mary Carpenter, Jennifer Stanwick-Klimek, Rebecca Schieffer, Alejandro Reyes, Brent Fluke, Josh Klimek, Travis Tjeerdsma, Tammy DeJong, Michael Joe Hanvey, Dr. Stephan Schroeder, Misty Tolsma-Hanvey, Lindsey Rabbass, Robin Myer, Candice Fejfar, Dayna Klawitter, Dennis Cropper, Thomas Huitema, Michael Meyer, Lori Stratman, Mike Grosshuesch, and Catherine Schlimgen, moved for a protective order directing that all discovery herein be stayed pending resolution of qualified immunity. Docket 43. Maday responded and objected to the requested protection order. Docket 55. Magistrate Judge Duffy granted defendants' motion for a protective order in part and denied it in part. Docket 57. Judge Duffy ordered defendants to immediately provide Maday his medical records and kites regarding medical care. *Id.* Judge Duffy stayed all other discovery pending the resolution of qualified immunity. *Id.*

The court construes Maday's letter filed on April 17, 2018 to be an appeal of Magistrate Judge Duffy's protection order at Docket 57. Docket 70. A district court may reconsider a magistrate judge's order on a nondispositive pretrial matter, such as a motion to compel, where it has been shown that the ruling is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A); *Ferguson v. United States*, 484 F.3d 1068, 1076 (8th Cir. 2007).

The district court reviews the objected-to portions of the order de novo.

28 U.S.C. § 636(b)(1).

Maday seeks to conduct discovery with defendants not represented by attorney Frank Geaghan. Docket 70. First, the only defendants not represented, at least in part, by attorney Geaghan are CBM Food Services and Brad Adams. Maday fails to identify any need to conduct discovery with either CBM Food Services or Brad Adams. Second, Maday's letter indicates that he needs discovery materials from Wisconsin defendants, who include Jon Litscher, Katharine Ariss, and Thomas Maloney. Attorney Geaghan represents the Wisconsin defendants and these defendants asserted qualified immunity as a defense. *See* Docket 52.

Under Rule 26(c), "the court has discretion to stay discovery on other issues until the critical issue has been decided." 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 2040 (3d ed.). A stay of discovery is within the district court's discretion and is reviewed by the appellate court for an abuse of that discretion. *Steinbuch v. Cutler*, 518 F.3d 580, 588 (8th Cir. 2008) (citing *Lakin v. Prudential Sec., Inc.*, 348 F.3d 704, 713 (8th Cir. 2003)); *see also Maune v. Int'l Bhd. of Elec. Workers*, 83 F.3d 959, 963 (8th Cir. 1996) (upholding the district court's granting of a party's request to stay discovery). The United States Supreme Court has reasoned that "the 'driving force' behind creation of the qualified immunity doctrine was a desire to ensure that 'insubstantial claims against government officials [will] be resolved prior to discovery.'" *Pearson v. Callahan*,

555 U.S. 223, 231-32 (2009) (alteration in original) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 n.2 (1987)). Because the qualified immunity issue may be dispositive, Magistrate Judge Duffy properly stayed discovery pending the resolution of the qualified immunity issue. Thus, Maday's appeal is denied.

II. Docket 64

On March 12, 2018, Maday filed a motion for a temporary restraining order and preliminary injunction. Magistrate Judge Duffy issued a report and recommended that Maday's motion for a temporary restraining order and preliminary injunction (Docket 39) be denied. Docket 50. Then Maday filed a motion for reconsideration of denial of injunctive relief (Docket 50) and correction of the record. Docket 64. But on April 17, 2018, Maday moved to withdraw his motion for injunctive relief (Docket 69) and Magistrate Judge Duffy granted Maday's motion (Docket 72). Thus, Magistrate Judge Duffy's report and recommendation (Docket 50) is refused and Maday's motion to reconsider denial of injunctive relief (Docket 64) is denied as moot.

To the extent that Maday's motion at docket 64 seeks to correct the record, the record has been appropriately supplemented and now includes the letter from Wisconsin State Circuit Judge W. Andrew Voigt.

Thus, it is ORDERED

1. Maday's appeal of Magistrate Judge Duffy's protection order at docket 57 (Docket 70) is denied.
2. Magistrate Judge Duffy's report and recommendation (Docket 50) is refused.

3. Maday's motion to reconsider denial of injunctive relief (Docket 64) is denied as moot.

DATED this May 4, 2018.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE